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Tax-Exempt Bond Financing of Sports Stadiums: Is the Price Right

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Articles

TAX-EXEMPT BOND FINANCING OF SPORTS STADIUMS: IS THE PRICE RIGHT?

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I. INTRODUCTION

The United States places great importance on professional sports. Fans, their teams, their sports heroes and their team loyalties have stood the test of time. Professional sports are an obsession of Americans and fans all over the world.

The economics of professional sports forces owners to obtain the best players and stadium deals for their money. Thus, no longer do sports team owners look for simple operational stadium leases that would allow them to play on "any old field," private stadium or municipal stadium. Instead owners are seeking to build new state of the art stadiums. There are many substantial and complex financial components to building these sports stadiums. The Internal Revenue Code ("Code") and its regulations add to this complexity when tax-exempt bonds are used to finance sports stadiums.

This Article proposes a middle-ground legislative approach, which is designed to preserve states' and political subdivisions' federal subsidy for tax-exempt bond financing when building new sports stadiums. Publicly financed sports stadiums provide professional sports teams with a competitive economic advantage in the sports industry by giving them the ability to offer a high quality/ high cost product to the sports-crazed public. In a free and open market, the public feeds the demand for professional sports.

Section II of this Article provides a background of tax-exempt bond financing for sports stadiums and the basics of tax-exempt bond financing within the intricate statutory framework of the Code.[1] Section III considers the congressional threat to curb or

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1. For a background discussion of tax-exempt bond financing, see *infra* notes 5-58 and accompanying text.

eliminate the federal subsidy carved out for tax-exempt bond financing.[2] Section IV addresses the public and private sectors' opposition toward congressional attempts to eliminate the federal tax-exempt bond subsidy used to finance sports stadiums.[3] Section V of the Article provides a middle-ground legislative approach that meets the federal government's true agenda and permits states and political subdivisions to continue to finance sports stadiums using tax-exempt bonds.[4]

II. TAX-EXEMPT BOND FINANCING

A. Background

States and political subdivisions have emphasized the use of tax-exempt industrial development bonds either as general obligation bonds or revenue bonds to finance sports stadiums. A general obligation bond ties the payments of principal and interest to the taxing power of the state or political subdivision issuing such bonds. A revenue bond ties the payments of principal and interest to a particular revenue stream generated from the facility being built. This revenue is typically generated by a dedicated tax, but it may come from some other source. A revenue bond works to limit effectively the payment obligation on bonds to a specific dedicated revenue source.

The beginning of tax-exempt bond regulation appeared in the United States Supreme Court's holding in *Pollock v. Farmers' Loan and Trust Co.*,[5] which held that the federal government has the authority to permit tax-exempt bond issuance by states and political subdivisions to finance municipal projects, such as housing and water projects.[6] Many years later, in *South Carolina v. Baker*,[7] the Supreme Court clarified that the federal government has the authority to regulate states in the area of tax-exempt bonds.

Prior to 1984, states and political subdivisions financed multi-million dollar sports stadiums by issuing tax-exempt debt that was

2. For a discussion of congressional threats to curb or eliminate the federal subsidy, see *infra* notes 59-77 and accompanying text.

3. For a discussion of such public and private opposition, see *infra* notes 78-114 and accompanying text.

4. For a discussion of a middle ground legislative approach, see *infra* note 115 and accompanying text.

5. 157 U.S. 429 (1895).

6. *See id.* at 585-89 (noting necessity and propriety of raising revenue by indirect taxation and upholding constitutionality of Tenth Amendment claim).

7. 485 U.S. 505, 515 (1988) (upholding constitutionality of Tenth Amendment claim).

attractive to investors. The resulting growth in the issuance of industrial development tax-exempt bonds to finance sports stadiums led Congress to conclude that the federal subsidy, via tax-exempt bonds, was reducing revenue that would otherwise flow into the federal coffers. The Deficit Reduction Act of 1984 ("1984 Act") was Congress' attempt to slow the issuance of tax-exempt industrial development bonds used for building sports stadiums.[8] However, Congress ignored the benefits of industrial development bonds used to redevelop urban areas and to promote projects with a public benefit. Congress' regulatory efforts were aimed at two Code provisions for tax-exempt bond financing of sports stadiums.

First, the 1984 Act capped section 146 of the Code for tax-exempt industrial development bond issuance with a state by state volume limitation.[9] This affected the volume of qualified private activity bonds. Qualified private activity bonds are bonds issued for a private purpose or to a facility that the government has an interest in subsidizing.[10] The Code did not prohibit the issuance of tax-exempt bonds for sports stadiums because the private purpose was still a qualified use for private activity bonds. The result of this Code change was a volume issuance limitation for states or political subdivisions. Larger states and political subdivisions were relatively less affected by the limitation than were smaller subdivisions.

Second, the 1984 Act prohibited in section 141 of the Code the use of bond proceeds to acquire land, currently used properties, and other facilities.[11] Thus, states and political subdivisions typically had to purchase the land through eminent domain proceedings. This, again, increased the financing costs to states and political subdivisions. Additionally, the prohibition was meant to prevent using bond proceeds to build luxury boxes and health facilities at stadiums.[12] As a result, none of the bond proceeds could finance any extras in sports stadiums. This measure also increased the cost of sports stadiums to states and political subdivisions. Congress' intent behind both Code amendments was to increase revenues to the federal coffers by limiting the use of tax-exempt bonds

8. *See* Deficit Reduction Act of 1984, Pub. L. No. 98-369 § 41, 98 Stat. 494 (1984).

9. *See* I.R.C. § 146(b)(1) (1988 & Supp. 2000) (setting cap at fifty percent of state ceiling for that year).

10. *See id.* § 141(b)(1) (1988 & Supp. 2000) (meeting private business test, private security or payment test, or private loan financing test).

11. *See id.*

12. *See* John D. Finerty, Jr., Comment, *Subverting the Internal Revenue Code in the "GAME" of Sports Stadium Financing*, 1 MARQ. SPORTS L.J. 301, 308 (1991).

to finance sports stadiums.[13] Thus, the federal government targeted the federal subsidy of tax-exempt bond financing to build sports stadiums as a potential abuse of tax-exempt bonds and as a federal revenue raising measure.

Undaunted, Congress continued targeting tax-exempt bonds issued for sports stadium financing. Specifically, United States Senator Moynihan of New York opposed the largely private use and private interests involved in financing sports stadiums, the loss of revenue to the federal coffers and the increased competition among states and political subdivisions to have professional sports teams in their communities.[14]

The Tax Reform Act of 1986 ("1986 Act") intended to eliminate sports stadium tax-exempt bond issuance by removing sports stadiums from the Code's exempt facilities list to have a qualified private activity bond.[15] The net effect was that private activity bonds could no longer be issued for sports stadiums, and tax-exempt industrial development bonds had to meet the newly increased public use requirements.[16] The 1986 Act targeted tax-exempt industrial development bonds by denying certain private use purposes unless a public use/public benefit was established for the bond issue.[17] In restricting tax-exempt bonds, Congress was under a misguided conception regarding who would receive the benefits from sports stadiums: the professional sports teams, states or political subdivisions, or communities.[18] In fact, these changes to the Code had the unintended effect of increasing tax-exempt bond issuance for building sports stadiums. The uncertainties surrounding the Code changes rushed many sports stadium bond issues to the market, and many bond issues were grandfathered under the previous Code provisions.[19]

Despite the proliferation of case law against the proposition and numerous amendments to the Code, the use of tax-exempt

13. *See id.* at 305-08.

14. 142 CONG. REC. S6306 (June 14, 1996) (statement of Sen. Moynihan).

15. Tax Reform Act of 1986, Pub. L. No. 99-514, 100 Stat. 2085 (1986) (explaining bond basics and private activity bonds). For a detailed explanation of bond basics and private activity bonds, see *infra* notes 24-46 and accompanying text.

16. For a discussion of these effects, see *infra* notes 24-46 and accompanying text.

17. *See* I.R.C. § 141(d)(1) (1988 & Supp. 2000).

18. *See* Finerty, *supra* note 12, at 305-08.

19. *See* Dennis Zimmerman, *CRS Report For Congress*, May 29, 1996, *reprinted in CRS Reports on Tax-Exempt Bonds Used to Finance Sports Stadiums*, TAX NOTES TODAY, May 30, 1996. The 1986 Act grandfathered bond issues under the old Code provisions so as to keep their tax-exempt status. *See id.*

bonds to finance sports stadium projects remains a common occurrence. The targeted and burdensome restrictions on tax-exempt bond financing did not stop the issuance of tax-exempt bonds to finance sports stadiums.

A free market economy operates on an assumption of efficient markets. Here the bond market adapted to the stringent Code and regulatory requirements by developing new methods to finance sports stadiums with tax-exempt bonds. After each adaptation the federal government has continued tightening restrictions on tax-exempt bond financing for sports stadiums to end what it sees as subsidized private use of tax-exempt funds.

The federal government's determination is evident in proposed legislation that plainly eliminates the use of federal tax-exempt bonds to build sports stadiums. Senator Moynihan called tax-exempt bond financing of sports stadiums an unintended federal tax subsidy.[20] An understanding of the current Code prescribes a process for tax-exempt bond projects that provides use restrictions, mandates qualifying tests and barely permits financing of sports stadiums using tax-exempt bonds. However, in most instances the Code is so problematic that alternative financing methods are utilized.

B. The Tax-Exempt Bond Financing Process

Tax-exempt bond financing for a sports stadium resembles the construction process of a large real estate development project. Most parties in a tax-exempt bond financing of a sports stadium attempt to protect their interests and capital while meeting stringent Code and regulation requirements.[21] Like any real estate project, building a sports stadium requires several pre-acquisition steps. The first step is a site study, which includes site analysis, zoning requirements, environmental impact, community impact, transportation and highway access analysis, parking options, suitability of the locale to prospective tenants and other factors.[22] The pre-acquisition costs are not charged to the bond issue but rather are a direct cost paid and subsidized by states and political subdivisions.

The next step is allocating ownership and control of the sports stadium, its design, its construction and its operation. This involves

20. For a discussion of Moynihan's views on this issue, see *supra* note 14 and accompanying text.

21. *See* Finerty, *supra* note 12, at 302-06 (discussing oratory of deal).

22. *See id.* at 303 (citing J. BAGBY, REAL ESTATE FINANCING DESK BOOK 84-92 (1980)).

either direct acquisition of land or utilization of ground leases, final architectural specifications, surveys, discussion of naming rights and property title searches.[23]

The last stage involves compiling financial data, leasing information and contracting for management and maintenance of the sports stadium. Additionally, this stage involves completing the financing, building the stadium, operating the stadium, making the debt service payments on the tax-exempt bonds and meeting use requirements. Thus, the Code governs every aspect of tax-exempt bond issuance.

C. Tax-Exempt Bond Basics

The Code drives the tax-exempt bond industry. Section 103 of the Code states that gross income does not include interest on any state or political subdivision bond, except for a private activity bond that is not a qualified bond.[24] This tax-exemption only extends to qualified private activity bonds.

A private activity bond is a bond that primarily funds or finances services for a private or non-governmental individual. A bond that does not fit the requirements of a qualified private activity bond will not be tax-exempt under section 103 of the Code.[25] A qualified private activity bond meets the Code's usage requirements for a qualified facility. Section 141 of the Code specifies that a qualified facility is deemed worthy of a federal tax subsidy regardless of the facility's private usage.[26] Sports stadiums are not qualified facilities.[27] Thus, tax-exempt bonds used to build a sports stadium must avoid classification as a private activity bond.[28]

A private activity bond meets either: (1)(a) the private business use test and (b) the private/security payment test; or (2) the private loan financing test.[29]

1. *Private Business Use Test*

Under the first prong of the private activity bond test, a tax-exempt bond meets the private business use test "if more than ten

23. *See id.*

24. *See* I.R.C. § 103(a) (1988 & Supp. 2000).

25. *See id.* § 103(b)(1) (1988 & Supp. 2000).

26. *See id.* § 141 (1988 & Supp. 2000).

27. *See id.* The 1986 Act removed sports stadiums from the list of exempt facilities that qualify for private activity bond status. *Id.*

28. *See* Daniel J. Lathrope, *Federal Tax Policy, Tax Subsidies, and the Financing of Professional Sports Facilities*, 38 S. TEX. L. REV. 1147, 1156 (1997).

29. *See* I.R.C. § 141(a)(1) & (2) (1988 & Supp. 2000) (defining private activity bond).

percent of the proceeds of the issue are to be used for any private business use."[30] Private business use is defined as any "use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit," not use by a member of the general public.[31] Private business use results from private use activities pursuant to a lease, management contract, incentive payment contract or other such output arrangement contract in a facility financed by tax-exempt bonds.[32]

Generally, temporary or incidental use by non-governmental entities will be disregarded for the purposes of the private business use test.[33] A qualified management contract, providing reasonable compensation for services rendered and not tied to a share of net profits from the sports stadium operations, will not give rise to a private business use.[34] However, normal use by a professional sports team usually will be greater than ten percent of the bond proceeds, which violates the private business use test. Therefore the first prong, being a conjunctive test, is met by not violating the second part, the private security/payment test.

2. *Private Security/Payment Test*

Under the second part of the first prong, the private security/payment test is met

> [I]f the payment of principal of, or interest on, more than 10 [sic] percent of the proceeds of a bond issue is directly or indirectly-(A)(i) secured by any interest in the property used or (ii) payments in respect of such property or (B) derived from payments in respect of such property, or borrowed money, used or to be used in a private business use.[35]

Thus, tax-exempt bonds that finance a sports stadium must not have principal and interest payments tied to the facility's private use (payments secured by the facility, its rents or derived from its rents) that amount to more than ten percent. The Code mandates that a

30. *Id.* § 141(b)(1) (1988 & Supp. 2000) (defining criteria for private business use test).

31. *Id.* § 141(b)(6)(A) (1988 & Supp. 2000).

32. *See* 26 C.F.R. § 1.141-3(b) (2000).

33. *See id.*

34. *See* Jeanette Bond & William L. Henn, *The Basic Rules for Tax Exempt Financing*, *in* TAX LAW AND PRACTICE 1995, at 97-100 (PLI Tax Law & Estate Planning Course, Handbook Series No. 365, 1995).

35. I.R.C. § 141(b)(2)(A) & (B) (1988 & Supp. 2000).

state or political subdivision using tax-exempt bonds to finance a sports stadium must have another source of revenue to fund ninety percent of the payments on the stadium. This federal government mandate has been a financial burden on states and political subdivisions.

Further, the ten percent rule adds to the states' and political subdivisions' financial burden by requiring favorable rental terms to the sports teams in order to meet the ten percent threshold.[36] The regulatory structure for tax-exempt bond financing of sports stadiums allows a state or political subdivision to receive only ten percent of the revenue generated by the sports stadium, which places the state or subdivision in a tough financial position. Building a sports stadium necessitates that other sources of funding be used to pay the debt service on the bonds. For example, some states and political subdivisions use lottery revenues, taxes, and now even the states' tobacco litigation settlement funds to fund the payments on tax-exempt bonds for a sports stadium.[37] States and political subdivisions must deal constantly with a scarcity of resources due to the federal government's mandates.

The discounted rent required by the Code is a part of the subsidy provided by political subdivisions, states and the federal government to professional sports teams.[38] If a bond issue exceeds the private business use test threshold but does not exceed the private security or payment test, then the first prong is not met. This is favorable because the bond issue will not be classified as a private activity bond. Tax-exempt bonds that do not meet the private activity tests are the bonds used to finance sports stadiums. Because they do not meet the test, these bonds fall outside the 1986 Act's volume cap limitations set for private activity bonds.[39]

3. *Private Loan Financing Test*

The second prong of the private activity bond test is the private loan financing test. This test is met, "if the amount of the proceeds of the issue which are to be used (directly or indirectly) to make or finance loans (other than loans described in paragraph (2)) to persons other than governmental units exceeds the lesser of (A) five percent of such proceeds, or (B) $ 5,000,000."[40] This test is more

36. *See* Lathrope, *supra* note 28, at 1156-58.

37. *See* Daniel Kruger, *Issuers Faced With Complex Choices for Tobacco Money*, THE BOND BUYER, Mar. 13, 2000, at 4.

38. *See* Lathrope, *supra* note 28, at 1158-59.

39. *See* I.R.C. § 146(a) (1988 & Supp. 2000).

40. *Id.* § 141(c)(1)(A) & (B) (1988 & Supp. 2000).

limited than the private business or private security/payment tests of the first prong in that the direct or indirect loan must exist to trigger the application of section 141(c) of the Code.

A loan, in this context, is a subset of use. A public or private use arises in every situation where there is a loan, but a loan does not arise every time there is a public or private use.[41] A loan can be a direct lending of bond proceeds or the economic equivalent of a loan. In other words, the private loan financing test will be met through the substance of a loan and not formality. Meeting this test causes a bond issue to be classified as a private activity bond.

However, a lease or other contractual agreement with respect to a tax-exempt bond financed facility is not treated as a loan if tax ownership is not transferred to a non-governmental person.[42] If a loan is not presented, in substance or form, in a tax-exempt bond issue, this prong of the private activity bond tests is disregarded. Typically the private loan financing test is not applicable for tax-exempt bond financing of sports stadiums because the financing methods avoid the use of loans.

4. *Private Activity Bond Regulations*

The private activity bond regulations impose a "reasonable expectations test" to the private activity bond tests.[43] At the bond issuance date, issuers of a tax-exempt bond must take into account the reasonable expectations about events and actions occurring over the entire stated term of the bond issue. Under the regulations, a tax-exempt bond issue that is reasonably expected to meet the private activity bond tests is a private activity bond.[44] However, an issuer who reasonably expects that post-issuance action will exceed one of the private activity bond tests may disregard such action when the issuer meets certain exceptions.[45]

The "reasonable expectations test" exception requirements are met when:

(1) the issuer reasonably expects as of the issue date that a property will be used for a government purpose for a substantial period before any non-qualifying act;
(2) the issuer is required to redeem all non-qualifying bonds within 6 [sic] months of any non-qualifying act;

41. *See* Bond & Henn, *supra* note 34, at 26-29.
42. *See* C.F.R. § 1.141-5 (c) (2000).
43. *See id.* § 1-141-2 (d)(2) (2000).
44. *See id.* § 1.141-2 (c) (2000).
45. *See id.* § 1.141-2 (d)(2)(ii) (2000).

(3) the issuer does not enter any arrangement with a non-governmental person as of the issue date with respect to the non-qualifying action; and
(4) the mandatory redemption meets the conditional requirements for remedial action for post-issuance acts.[46]

The regulations provide flexible requirements so that a tax-exempt bond will not be a private activity bond. Bonds that do not meet the private activity bond tests or that fit the above exceptions are used to finance sports stadiums.

D. Summary of Tax-Exempt Bond Financing Tests

A tax-exempt bond issue must not exceed the private security/payment test's requirement that no more than ten percent of the stadium debt be secured by the stadium or its revenues. Staying within this requirement keeps a tax-exempt bond from being a private activity bond.[47] Tax-exempt bond issues are carefully structured so that the private security/payment test is not violated. As a result, tax-exempt bond issuers and professional sports teams are able to sidestep the private business use test – a test that is frequently violated in this type of financing.[48]

Congress' highly restrictive mandates in the Code and regulations regarding tax-exempt bond financing for sports stadiums have increased states' and political subdivisions' tax-exempt bond financing costs. Although Congress' true agenda was to reduce competition between states and political subdivisions, the Code and regulations failed to meet this objective. Competition between states and political subdivisions has increased, and even more incentives are provided to lure professional sports teams to a community.

E. Alternative Financing, Incentives, Economics & Political Reasons to Support the Sports Stadium Subsidy

Numerous methods exist to finance a sports stadium and to maximize revenues from the stadium. One method to finance sports stadiums is the traditional sale-leaseback plan, where the

46. William L. Gehrig, *Fundamentals of Municipal Bond Law 1998: Federal Tax Aspects of Municipal Bonds*, 1998 NAT'L ASSOC. OF BOND LAW. 100 (1998) (explaining that even if private activity bond tests are met, satisfying all requirements will still allow tax-exempt status).

47. *See* I.R.C. § 141(b) (1999).

48. *See* Gehrig, *supra* note 46, at 99.

sports team builds a stadium and sells it to a state or political subdivision while including a long-term stadium lease by the professional sports team.[49] An incentive used with a sale-leaseback involves the sale or lease of the stadium's name to a corporation. In Philadelphia, First Union Bank paid a hefty price to put its corporate name on the sports stadium's marquee as the First Union Center, which is home to the National Basketball Association's Philadelphia 76ers.[50] Corporations receive the benefit of their corporate name mentioned in all promotions for events at the stadium and during national television coverage of 76ers' games. This incentive generates revenue for professional sports teams because the revenue is tied to the professional sports team's private use.

Another method is to finance the stadium by using the revenue from long-term leases of luxury boxes.[51] These luxury box seats resemble hotel rooms with plush seating, catered food and beverage services, private facilities and private parking passes.[52] The revenues generated from such leases could generate a significant revenue stream to cover construction costs or operating costs of sports stadiums.[53] But, the use of luxury box seats is really an incentive provided to professional sports teams because the funds are limited by the ten percent rule to be used to pay the debt service on the bonds.[54]

Another method that allows a state or political subdivision to raise revenue is raising taxes such as business and occupancy ("B & O") taxes, hotel/motel surcharges, sales taxes, property taxes and other taxes. States and political subdivisions also use lottery proceeds and funds won from the states' tobacco litigation to provide a stream of income to fund ninety percent of the costs of a sports stadium, the amount over and above the ten percent rule.

Financing methods of last resort are private financing options such as taxable stadium bonds, bank loans and budget appropria-

49. *See* Kerry M. Fraas, *"Bankers Up!" Professional Sports Facility Financing and Other Opportunities for Bank Involvement in Lucrative Professional Sports*, 3 N.C. BANKING INST. 201, 213 (April 1999) (explaining that while this financing option is beneficial to team by allowing team to avoid property tax, other parties involved are exposed to substantial risk if team's revenues decrease or team defaults on lease).

50. *See Stadium Naming Rights*, ST. LOUIS POST-DISPATCH, Jan. 23, 2000, at F10.

51. *See* Finerty, *supra* note 12, at 310 (discussing alternative financing options for sports complexes).

52. *See id.* at 309-11 (describing amenities of luxury suites).

53. *See id.* at 310-11 (noting that luxury suites are leased for seven or ten years and range in cost from $50,000 to $200,000).

54. *See id.* at 311 (noting impact on luxury suite financing from congressional changes to Internal Revenue Code, which disallows previous tax deduction); *see also* I.R.C. § 141(b) (1999).

tions. Taxable bonds are avoided when there is a significant difference (greater than five percent) in the cost of issuing tax-exempt bonds versus taxable bonds. Bank loans and budget appropriations are part of the financing package provided by states and political subdivisions to structure stadium deals and help raise capital to cover their portion of construction costs and infrastructure improvements for the stadium site development.[55]

The tax-exempt bond financing of sports stadiums for professional sports teams is akin to a state or political subdivision providing tax breaks and incentives to lure new businesses and corporations to its communities.[56] In each case, a professional sports team or a business would look for the best deal to benefit its bottom line.

States and political subdivisions are economically aware of the intense competition for professional sports teams. The professional sports teams launch their own "sports industry" within a community and create jobs for sports networks, sportscasters, production companies, statistic companies, technicians, retail jobs and hotel jobs. Thus, the bottom line or economic reality for the states and political subdivisions is the substantial economic benefits of having professional sports teams, like any other large business or industry, in their communities.

Political leaders are elected to represent their community's wishes, provide government services, attract businesses to their community and enhance the quality of life in their community. This is part and parcel of what constitutes the public purpose doctrine.[57] This doctrine explains what occurs when a community entrusts and empowers political leaders to enact laws to protect and benefit those in the community. In a representative democracy, such as the United States, the public should trust its government officials to act in the best interests of the community and issue tax-exempt bonds and spend the bond proceeds on sports stadiums

55. *See* Fraas, *supra* note 49, at 222 (using example of MCI Center in Washington, D.C., to show how bank loans are negotiated).

56. *See id.* at 208-11 (explaining that tax-free bonds may be issued if bonds are not private activity bonds under I.R.C. § 103(a) & (b) (1994), which generally requires municipality to back said bonds).

57. *See* Emeline C. Acton & Mary Helen Campbell, *Public Funding of Sports Stadiums and Other Recreational Facilities: Can the Deal be "Too Sweet"?*, 27 STETSON L. REV. 877, 884-91 (1998) (discussing creation and evolution of public purpose doctrine in Florida courts). The doctrine allows an incidental benefit to go to a private entity as long as the project serves a primary public purpose. *See id.* at 884.

that provide a public purpose or value.[58] The proposed congressional legislation, however, would eliminate the ability of a state or a political subdivision to determine the appropriate projects to receive tax-exempt bond funds.

III. CONGRESSIONAL ATTEMPTS TO ELIMINATE THE FEDERAL TAX SUBSIDY FOR SPORTS STADIUM FINANCING

A. Proposed Congressional Legislation

Some Senators have proposed legislative initiatives to address the issue of sports teams relocations and to limit or end the federal subsidies to professional sports teams associated with tax-exempt bond financing.[59] Under a misguided conception, the federal government still seeks to end the competition among states and political subdivisions for professional sports teams and seeks to increase federal revenues by restricting tax-exempt bonds used to finance private use sports stadiums. Two types of bills have been proposed to meet the federal government's true agenda.

1. *Relocation Bill*

First, the relocation bill would establish criteria as to when a professional sports team may move from one community to another. The Team Relocation and Taxpayer Protection Act, proposed by Senator Dewine, seeks to prevent teams from relocating from one state or political subdivision to another, using incentives offered from tax-exempt bonds by prohibiting the use of tax-exempt bonds in this situation.[60] The bill intends to deny the federal

58. *See* Poe v. Hillsborough County, 695 So. 2d 672 (Fla. 1997). The court held that issuing bonds to finance a new Tampa Bay Buccaneers stadium did not violate the Florida Constitution because the project served a public purpose. *See id.* at 674-75. Furthermore, the court stated that any member of the public who was dissatisfied had a remedy at the ballot box. *See id.* at 679; *see also* Acton & Campbell, *supra* note 57, at 878 (explaining competition between cities to attract and retain sports teams and its effect on state government's use of public funds); Martin v. City of Philadelphia, 215 A.2d 894, 896-98 (Pa. 1966) (holding that funding of sports stadium is legal because private business benefits are merely incidental to public's recreation and pleasure).

59. *See* Adam Safir, *If You Build It They Will Come: The Politics of Financing Sports Stadium Construction,* 13 J.L. & POL. 937, 955-63 (1997). In order to allow the NFL to block team relocation, proposed bills would immunize the NFL from antitrust liability. *See id.* at 955-60. Certain bills would also grant rights to the host city of a team that wishes to relocate. *See id.* at 958-60. Other proposals would remove the option of tax-exempt public bonds or disallow teams who are moving from benefiting from such bonds. *See id.* at 960-62.

60. *See* S. 1529, 104th Cong. § 2 (1996) (preventing franchises from receiving tax-exempt bonds for new location if they leave facility owned or financed by federal, state or local entity when in past year attendance of home games averaged at

subsidy to teams that break lease agreements and move to other communities.[61] The bill tries to regulate an end to the competition between states and political subdivisions for professional sports teams.

The relocation bill and other similarly drafted relocation bills are questionable and remain stalled in Congress. Preventing states and political subdivisions from using tax-exempt bonds as a financing method to lure teams away from one community to another will not work. States and political subdivisions will still compete for professional sports teams but with an added financial burden of using taxable financing and local tax break schemes. States and political subdivisions realize that there is real economic value and benefits by having a professional sports team in their community.[62]

Additionally, the relocation bills seek to limit the leverage a sports team may exert to pressure states and political subdivisions into offering lucrative sports stadium deals in order to retain the team's affiliation.[63] In fact, these types of relocation bills are a protectionist measure that flies in the face of the American ideal of competitive markets, open markets and a free market economy. The bills allow states and political subdivisions to use an existing lease as a bargaining chip in relocation talks with professional sports teams.[64] The bills are questionable because the lease agreement should provide remedies, or the state or political subdivision is getting the basis of its negotiated bargain under the professional sports teams lease agreement. Senator Dewine's bill would single out professional sports teams, although there are other businesses that receive tax incentives to relocate to a community that are not penalized when they later decide to leave a community. This bill is anti-competitive because the free movement of a business is restricted beyond the bounds of any agreement negotiated between states and political subdivisions and the professional sports teams.

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least seventy-five percent of normal capacity, and within year of announcement of their intention to leave, state or local government has voted for tax to finance new or improved facility).

61. *See* Lathrope, *supra* note 28, at 1163-64 (explaining that bill denies federal subsidies to franchises with existing leases who break their leases to move to another city).

62. *See id.* at 1159-61 (stating that state and local economic benefits from publicly owned sports complex are exaggerated).

63. *See id.* at 1162-65 (asserting that teams receive subsidies through coercive bargaining with cities).

64. *See id.* (explaining that although DeWine-Glenn bill may limit relocations of franchises, it does not decrease subsidies and allows subsidies to remain bargaining chip between competing cities).

2. *The Tax Bill: The STADIA Legislation*

The second type of bill is the proposed tax bill that eliminates the federal tax subsidy of tax-exempt bond financing for sports teams. Senator Moynihan's Stop Tax-Exempt Arena Debt Issuance Act ("STADIA") legislation attempts to protect the taxpayer by ending the unintended federal tax subsidy for tax-exempt bond financing of sports stadiums.[65] Senator Moynihan contended that tax-exempt bond financing of sports stadiums is inappropriate especially in situations where other cities lure professional teams away from their current homes.[66] Senator Moynihan's STADIA legislation proposes to eliminate the federal subsidy for tax-exempt bond financing by reclassifying such bonds as private activity bonds.[67] This reclassification would eliminate the use of tax-exempt bonds to finance sports stadiums.[68] Thus, the proposed STADIA bill focuses on the reclassifying of tax-exempt bonds to end an unintended subsidy that the federal government alleges divides states, political subdivisions and communities through intense competition for professional sports teams.

The Senator argued that the intent of the 1986 Act was not to permit tax-exempt bond financing for sports stadiums, but to prohibit such private use for tax-exempt bonds.[69] The Senator said that professional sports teams, states and political subdivisions have circumvented the law by using the unintended federal tax subsidy to build large, unneeded sports stadiums.[70] Moynihan argued that

65. *See* 142 CONG. REC. S6306 (daily ed. June 14, 1996) (statement of Sen. Moynihan) (asserting that loophole created in 1986 legislation injures state and local governments and limits subsidies available to people who need federal assistance); *see also* 143 CONG. REC. S994-02 (daily ed. Feb. 5, 1997) (statement of Sen. Byrd) (supporting Senator Moynihan's bill by stating that offering tax-exempt bonds to lucrative sports industry instead of benefits for nation, such as schoolbooks and safer roads, shows that "America has its values standing on their heads").

66. *See* S. 224, 106th Cong. § 1 (1999) (as introduced by Sen. Moynihan on Jan. 19, 1999) (reclassifying bond issues for professional sport facilities as private activity bonds by making private security or payment tests inapplicable).

67. *See id.* For further discussion of private activity bonds, see *supra* notes 24-46 and accompanying text.

68. *See* I.R.C. § 141(e) (1999) (defining term "qualified bond").

69. *See* 142 CONG. REC. S6306 (daily ed. June 14, 1996) (statement of Sen. Moynihan) (explaining that Congress repealed private activity bonds intending that stadiums no longer be financed with federally subsidized bonds).

70. *See* Andrew Gasper, *Senator Moynihan's Field of Dreams: If You Build It, They Will Come . . . But Not At the Federal Taxpayer's Expense*, 17 VA. TAX REV. 341, 346-49 (1997) (discussing how in order to receive tax-exempt status for their stadium bonds, cities were forced to structure their financing so that no more than ten percent of debt was secured by revenues generated by stadium, its property and its businesses). This structure causes the cost to be shifted to other sources or reve-

bonds to build stadiums are a private use and should be private activity bonds that are subject to the volume cap under section 146 of the Code.[71] The STADIA bill, in reality, ends the ability to use tax-exempt bonds to finance sports stadiums because the sports stadiums would specifically be disqualified under requirements as private activity bonds.[72]

The rationale for introducing STADIA is: (1) the federal government is losing tax revenue from tax-exempt bond financing of sports stadiums; (2) states and political subdivisions are unfairly forced to compete and provide tax-exempt bond financing to sports teams due to the federal subsidy and when current stadiums are not obsolete but merely increase revenues; (3) the 1986 Act meant to end tax-exempt bond financing of sports stadiums, and STADIA is only a corrective action to the original intent of the 1986 Act; and (4) sports stadiums provide little economic benefit to states and political subdivisions.[73] Moynihan's rationale is significantly flawed. Many key opponents to the STADIA legislation contend that the proposed bill usurps states' and political subdivisions' spending power and ability to control their spending of federal, state and local monies.

Additionally, STADIA originally did not provide any phase-in period for the prohibition of tax-exempt bond financing of sports stadiums.[74] The proposed legislation would have been effective from its introduction in the Senate Finance Committee in 1997.

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nue, such as taxes and lotteries. *See id.* at 347-48. By allowing the bonds to be tax-exempt, the burden of payment also shifts to federal taxpayers. *See id.* at 348-49; *see also* 142 CONG. REC. S6306 (daily ed. June 14, 1996) (statement of Sen. Moynihan) (arguing that only reason for building new stadiums and rebuilding existing stadiums is to increase revenues for sports teams' owners).

71. *See* 142 CONG. REC. S6506 (daily ed. June 14, 1996) (statement of Sen. Moynihan) (arguing that stadiums should not be paid for by taxpayers).

72. *See* Milton S. Wakschlag, *Handle with Care: Tax-Exempt Bonds Can Be Used to Finance New Sports Arena for High-Profile Teams, But Only if Certain Strict Guidelines are Followed,* 6 INFRASTRUCTURE FIN. 11 (Sept. 1997) (explaining changes to be adopted by STADIA in 1997 legislation and categories of governmental and private use for bond status determinations); *see also* Amy B. Resnick & Craig T. Ferris, *Reintroduced Bill Would Ban Tax-Exempt Bonds for Stadiums,* THE BOND BUYER, Jan. 21, 1999, at 5 (discussing changes in STADIA in 1999 legislation and importance of effective date of legislation and grandfather clause).

73. *See* 142 CONG. REC. S6306 (daily ed. June 14, 1996) (statement of Sen. Moynihan) (arguing that factors that existed in 1986 and prompted Tax Reform Act exist today); *see also* Gasper, *supra* note 70, at 350-53 (discussing Senator Moynihan's arguments for STADIA and how his proposed changes intend to provide solution).

74. *See id.* (suggesting that effective date should be October 22, 1986 when President Reagan signed Tax Reform Act of 1986 because that was when Congress intended issue to be resolved).

The bond market's industry officials and the public sector successfully argued that bond issues would be retroactively penalized. The effective date was later amended to be effective from passage of the proposed STADIA bill.[75]

In reality, the federal government's "stormtrooper" mentality borders on the tactics of a socialist banana republic, and governmental officials must change their ways of dealing with perceived industry problems. The proposed STADIA legislation offers no middle-ground approach; it represents a federal government mandate. The legislation has no support from state and political subdivisions, sports team owners or bond industry officials.[76]

The STADIA legislation takes free and open market competition out of professional sports and singles out the sports industry from other federally subsidized industries, such as family farms, steel companies, sugar growers, etc.[77] Senator Moynihan's rationale may raise some valid concerns, but only when it is viewed in a vacuum. The rationale is flawed in that it fails to consider the views of the parties involved in tax-exempt bond financing of sports stadiums.

IV. STOP THE STOP TAX-EXEMPT ARENA DEBT ISSUANCE ACT

A. The Flaws in the STADIA Rationale

1. *The First Rationale*

The first rationale for introducing STADIA is that the federal government is losing tax revenue from tax-exempt bond financing of sports stadiums.[78] This is simply not true from two perspectives. The federal coffers could actually realize an increase in revenue.[79] Yet, any increase would be at the expense of the states and political

75. *See* Wakschlag, *supra* note 72, at 11 (stating that originally STADIA would have been effective as soon as it was reported, but it was amended to be effective when passed and signed into law).

76. *See* Safir, *supra* note 59, at 963 (noting how legislation provides relief to taxpayers). However, legislation places larger burdens on state governments, making it more difficult for sports team owners to receive funding for new facilities. *See id.*

77. *See* Gasper, *supra* note 70, at 341-48 (noting that as result other programs are being neglected).

78. *See* 142 CONG. REC. S6306 (daily ed. June 14, 1996) (statement of Sen. Moynihan) (reporting that from 1980 to 1985 annual amount of tax revenue lost due to tax-exempt bonds rose 236 percent).

79. *See* Safir, *supra* note 59, at 961 (discussing how reclassifying bonds to finance sports facilities as private activity bonds would provide relief to federal taxpayers but would require state and local governments to pay more in federal taxes or produce more money up front for stadiums).

subdivisions that would pay more federal taxes and bear greater financing costs.[80] States and political subdivisions would be forced to issue taxable bonds or use other local tax schemes to finance sports stadiums.[81]

The first problem is the elimination of the federal subsidy. The federal government should instead limit states and political subdivisions' issuance of tax-exempt bonds for sports stadiums. This limitation would credit funds raised from tax-exempt bond financing for sports stadiums against other federal funds received by the state or political subdivision. State and political subdivisions receive federal funds to assist in the operation of programs, to provide financial assistance, and to provide for the operation of the state or political subdivision itself.[82] If a state or political subdivision takes advantage of the unintended federal subsidy, then it has made an autonomous decision to allocate some of its federal funds for the current year, and perhaps future years, to the endeavor of building a sports stadium with tax-exempt bonds.[83] This limitation would force states and political subdivisions to evaluate carefully the economic value and benefits of having a professional sports team.

The federal government should enact a mechanism to reduce other federal transfers to the state or political subdivision that receives a federal tax subsidy from building a sports stadium. This reduction could be based on standards the federal government currently uses to allocate its funds to states and political subdivisions. The federal government standard for federal funding is based on a state's or political subdivision's representative population and size.

The second perspective is that funds provided by the federal subsidy do have a direct economic impact in a state or political subdivision where a sports stadium is built. Senator Moynihan has presented economic models and compared the investment in a sports stadium to standard investments and concluded that the investment solely in the sports stadium resulted in economic loss.[84]

80. *See id.* (discussing heavier burden placed on local and state governments).

81. *See id.*

82. *See* David Burke, *The Stop Tax-Exempt Arena Debt Issuance Act*, 23 J. LEGIS. 149, 155-57 (1997) (noting that federal subsidies for construction of new facilities is unwarranted).

83. *See id.* at 155-57 (explaining that although there is very vocal argument against STADIA, loophole in existing law allows tax-exempt bonds to benefit athletic franchises instead of traditional public purposes for which they were intended).

84. *See* Gasper, *supra* note 70, at 360-64 (explaining that sports stadiums do not increase revenues for city, revenues are merely shifted to area where stadium is located, and any increase in revenues is enjoyed by franchise owner); *see also*

But, Moynihan's economic models are flawed because their results only account for the investment solely in a sports stadium and exclude other factors.

Other economic factors must be analyzed for an accurate reflection of the effects of building sports stadiums with tax-exempt bonds. The economic factors include: increased tourism dollars, hotel occupancy taxes and surcharges, intangible prestige benefits of having a sports team in a state or political subdivision, jobs created directly in the sports industry and indirectly in other areas of the community by the sports team and the stadium, increased charitable works by sports teams, increased food and beverage consumption in the heart of a community, quality of life issues because people and businesses choose to locate in cities with sports teams and many other aspects, some quantifiable and other factors less quantifiable.[85] Some economists have likened the effect of building a sports stadium in state or political subdivision to that of adding a major department store or a small university to the economy of the community.[86] Economic reports have placed the impact of Cincinnati's professional sports teams and stadiums at $245 million annually to the community.[87]

Senator Moynihan may counter that sports stadiums represent a waste of federal tax dollars to build unneeded facilities in states and political subdivisions.[88] Another Moynihan concern might be that federal dollars spent on building sports stadiums represents lost opportunity costs because the funds could be used elsewhere in a community. His concerns have some validity, in that a sports stadium may not be the best use of tax dollars. The greater concern, however, is that the federal government should not decide what projects are best for states and political subdivisions. Political leaders of states and political subdivisions are entrusted with responsibility, authority and power to tax and spend for their communities.

Lathrope, *supra* note 28, at 1153-55 (stating that economic experts have concluded that constructing new publicly owned stadiums has negative economic impact).

85. *See* Gasper, *supra* note 70, at 360-67 (noting studies done by experts in field when evaluating pros/cons of stadiums and their economic impact).

86. *See* Kenneth L. Shropshire, *Sports Facilities, Franchises, Events and the American Urban Renaissance*, 30 U. TOL. L. REV. 385, 386-87 (1999) (discussing economic impact of franchise on its host-city and effect on fan/franchise relationship).

87. *See* Robert Taylor Bowling, *Sports Aggravated: The Fan's Guide to the Franchise Relocation Problem in Professional Sports*, 28 STETSON L. REV. 645, 651-52 (1999) (stating that estimated gross annual revenues generated by sports teams from $30 million to $75 million while in 1997 Stanford University had gross revenues of $1.5 billion).

88. For a discussion of the allocation of federal subsidies, see *supra* notes 55-58 and accompanying text.

Without the federal subsidy for sports stadiums, there is a distinct possibility that the federal government would be forced to increase allocations of federal funds to states and political subdivisions. The economic benefits derived from having the federal subsidy for a sports stadium are significant for states and political subdivisions. The loss of these benefits would need to be replaced either through attracting other businesses or receiving increased federal government subsidies. The ability to use tax-exempt bonds to finance sports stadiums is essential to attracting and keeping professional sports teams and other businesses in a state or political subdivision's community. The exhaustive list of economic benefits seem to support maintaining some form of the federal subsidy for tax-exempt bonds to build sports stadiums, especially because the economic effects are far reaching into a community.

2. *The Second Rationale*

The second rationale is that states and political subdivisions are unfairly forced to provide tax-exempt bond financing to sports teams because of the federal subsidy, even when current stadiums are not obsolete, but merely to increase revenues for the owners.[89] This too, is an incorrect analysis of the situation.

Currently, state and political subdivision leaders including:

(1) the Government Finance Officers Association ("GFOA");
(2) the U.S. Conference of Mayors;
(3) the National Association of Counties;
(4) the National Association of State Treasurers; and
(5) the National League of Cities,

have joined with sports team owners, investment banks, bond underwriters and sports leagues to oppose the STADIA legislation.[90] The GFOA is very concerned that the STADIA legislation usurps a state or political subdivision's ability to borrow and finance its projects and to manage its affairs.[91]

89. *See* 142 CONG. REC. S6306 (daily ed. June 14, 1996) (statement of Sen. Moynihan) (stating that existing stadiums will continue to function for years to come and that fans love historic stadiums).

90. *See* Burke, *supra* note 82, at 155-57 (noting that GFOA, investment banks, bond underwriters sports leagues, Council of Mayors and League of Cities have lobbied against bill); *see also* Gasper, *supra* note 70, at 353 (same).

91. Government Finance Officers Association, *GFOA Fact Sheet: Sports Facilities Bonds*, *in* UNDERSTANDING BUSINESS & LEGAL ASPECTS OF THE SPORTS INDUSTRY 1999, at 401, 403 (PLI Patents, Copyrights, Trademarks, & Literary Prop. Course, Hand-

If states and political subdivisions were being unfairly forced to provide tax-exempt bond financing for sports stadiums, they would unify in support of the STADIA legislation. Instead, they vehemently oppose the STADIA bill because they recognize the value of having sports teams in their communities.[92] One example of a city whose growth has boomed with new stadiums is Baltimore, which constructed new stadiums for the Baltimore Ravens and Baltimore Orioles.[93] The National League of Cities issued the following statement against STADIA,

> The process of determining local priorities is difficult enough without having millions of dollars of planning work at the local level jeopardized by a single member of Congress who has different priorities. If the entire Congress and the President wish to debate this issue: fine, go ahead. But to allow any one member to assert his or her priorities over all citizens of a community and to throw out hundreds of hours of planning and preparation for a community facility clearly permitted under existing federal law is simply wrong.[94]

Additionally, communities would not elect politicians promoting sports stadium legislation, and bondholders would not invest in a state or political subdivision's sports stadium bonds if the project was not viable and did not provide economic value to the community and investment value to investors' bottom line.

Professional sports team owners want the increased revenue generated by a new stadium with luxury boxes and amenities because of the high costs in professional sports.[95] Owners are burdened by stadiums that need numerous costly repairs and that no longer meet their usage requirements. Stadiums, therefore, are not being built merely to enhance professional sports team revenues.[96] Two contrasting examples exist in Pennsylvania.

book Series No. 549, 1999) (expressing concern that this legislation will also affect financing for public and community oriented sports facilities).

92. *See* Lathrope, *supra* note 28, at 1159.

93. *See* Shropshire, *supra* note 86, at 391 (stating that new stadiums have contributed to "renaissance" in Baltimore).

94. Frank Shafroth, *Moynihan Bill Set to Prevent Cities' Use of Tax Exempt Bonds: Stadium Constructions May be Held up Nationwide,* NATION'S CITIES WKLY., June 24, 1996, at 1.

95. *See* 142 CONG. REC. S6306 (daily ed. June 14, 1996) (statement of Sen. Moynihan) (stating importance of luxury boxes).

96. *But see* Shropshire, *supra* note 86, at 390 (arguing that owners' primary motivation for relocation and new stadiums is increased profit); 142 CONG. REC. S6306 (daily ed. June 14, 1996) (statement of Sen. Moynihan).

The first example is the Spectrum in Philadelphia, an old building in need of repairs. The Spectrum's seating capacity was insufficient to meet the local demand for attending professional sports events. The state responded by building an arena now known as the First Union Center.[97] The Spectrum is used for smaller events and concerts, while the First Union Center is used for the Philadelphia 76ers, the Philadelphia Flyers, large concerts and other large crowd events. Philadelphia now has the best of both worlds – the continued use of an old stadium and a brand new stadium.

Pennsylvania is also in dire need of stadiums in Pittsburgh for the Pirates and Steelers, and in Philadelphia for the Phillies and Eagles because the existing stadiums are in horrible disrepair.[98] Pennsylvania officials fall into two categories. Those who are fiscally prudent are hesitant to build new sports stadiums that provide a safe, comfortable and profitable environment for professional teams. The fiscally conservative officials represent roadblocks to building new professional sports stadiums. For the past five years, the fiscally conservative officials have succeeded, as efforts to approve tax-exempt bond financing for building new stadiums in Pittsburgh and Philadelphia have failed. Meanwhile, the teams continue to be burdened by outdated, old and crumbling stadiums.[99] As public representatives, the officials have a responsibility to provide public services such as sports, entertainment and recreation to their communities. If the federal government mandates the STADIA legislation, the financial burdens facing the same government officials who rely on Moynihan's unintended federal subsidy would be unimaginably high.

3. *The Third Rationale*

The third rationale is that the 1986 Act meant to end tax-exempt bond financing of sports stadiums, and STADIA legislation is

97. *See* Charles Mahtesian, *Throwaway Stadium: The Fancy New Arena You Build Today May be a White Elephant Before You Know It*, GOVERNING, Jan. 2000, at 41-42.

98. *See* David Hoffman, *Pennsylvania Governor to Veto Bill with Funds for Pittsburgh Stadiums*, THE BOND BUYER, Dec. 1, 1998, at 1.

99. *See* ANDREW J. CARN, PHILADELPHIA STADIUM TIMELINE (Winter 2000) (noting also that there is lack of public support for public financing and chosen locations for new stadiums); *see also* Hoffman, *supra* note 98, at 1 (explaining that Governor Tom Ridge would veto legislation that allowed for bond sale to finance new stadiums in Pittsburgh).

only a corrective action to the original intent of the 1986 Act.[100] Senator Moynihan believes that the corrective action of the STADIA legislation should be enacted without debate or discourse. According to Moynihan, the 1986 Act's silence on sports stadiums as exempt facilities is an implicit authorization to eliminate tax-exempt bonds to build sports stadiums, as the stadiums become an unintended federal subsidy.[101] This is a wrong and surprising result from a political veteran like Moynihan, a man who has made a career of bringing parties together to reach agreements and pass good legislation. This third point is plainly punitive.

In 1997, Moynihan introduced the STADIA legislation but only after New York's professional sports teams had completed tax-exempt bond financing to repair and renovate their sports stadiums.[102] Curiously, after re-introducing the STADIA legislation in 2000, Moynihan announced his retirement from the Senate at the end of the 2000 term.[103] It is no coincidence that in 2000, New York would seek financing for new stadiums for the New York Mets and Yankees. It seems that Moynihan had been catering to the political special interest groups in his New York district. The timing of his legislative proposals were meant to prevent professional sports teams outside of New York from obtaining any tax-exempt bond financing for sports stadium projects. Perhaps Moynihan truly believed in his STADIA legislation and was tired of catering to the whims and pressures of the New York sports teams owners and other political supporters. Thus, the New York Senator, to appease his own conscience and retain his integrity, chose to retire rather than continue to be a puppet of his political supporters.

4. *The Fourth Rationale*

The fourth rationale that sports stadiums provide little economic benefit to the states and political subdivisions is based on economic data that fails to consider economic effects beyond the

100. *See* 142 CONG. REC. S6306 (daily ed. June 14, 1996) (statement of Sen. Moynihan) (explaining how new legislation will close loophole that allowed for tax-exempt bonds).

101. *See* Kevin Green et al., *Using Tax-Exempt Bonds to Finance Professional Sports Stadiums*, TAX NOTES TODAY, Mar. 30, 1998.

102. *See* Burke, *supra* note 82, at 157 (noting that National League of Cities was angered that cities in New York had just completed financing programs).

103. *See* Craig T. Ferris, *Moynihan Plans to Retire, Sources Say*, THE BOND BUYER, Nov. 9, 1998, at 5 (stating Moynihan's plans to retire and noting his activities regarding tax-exempt bonds).

walls of the sports stadium.[104] As stated previously, Senator Moynihan's economic data looks only at the profitability and financial results of building a stadium. Analyzing this economic data in isolation is not favorable to the operation and profitability of sports stadiums.

Moynihan's economic data made two assumptions. First, it assumed that a stadium has no benefits outside the walls of the stadium. Second, it assumed the marginal tax rates of average investors in tax-exempt securities would apply. The assumptions in Moynihan's economic data overstate the effect supporting the elimination of tax-exempt stadium bonds that in reality comprise a small part of the tax-exempt issuance market.[105]

Moynihan has sociologists jumping on his bandwagon. Based on their visits and observations at numerous sports stadiums around the country, two college sociology professors have asserted that sports stadiums provide little economic benefit. A sociologist is defined as one who studies the problems of society, and these two professors started with a premise that sports stadiums are a problem of society. While the sociology professors presumably had a good time attending games all over the country, their conclusions are flawed because they are based on mere observations and no empirical or economic data.[106]

A more accurate reflection of the economic effects of sports stadiums would consider other quantifiable economic factors. The economic factors that look beyond the walls of a sports stadium are what spur the building of new sports stadiums. For example, New Orleans had many investors in the Louisiana Stadium and Exposition District as well as members of the Hotel Trade Association supporting its sports stadium bonds because of projected increased revenues and increased tourist tax collections.[107]

Professional sports teams enhance and increase private and public consumption in states and political subdivisions, provide spillover economic benefits to the community and appeal to a broad cross section of citizens of varying socio-economic groups. The benefits of professional sports teams and stadiums are transferred

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104. *See* 142 CONG. REC. S6306 (daily ed. June 14, 1996) (statement of Sen. Moynihan) (describing report finding no economic impact due to new stadiums).

105. *See* Green et al., *supra* note 101, at 2.

106. *See* Rick Eckstein & Kevin Delaney, *Cities and the Stadiums Comparing Downtowns of Baltimore, Cleveland and Denver with Philadelphia's is Misleading*, PHILADELPHIA INQUIRER, Mar. 16, 2000, at A19.

107. *See* Christopher McEntee & Jon McKenna, *Arena Bonds Have the Strength of the New Orleans' Hotel Trade Backing Them*, THE BOND BUYER, Dec. 10, 1998, at 24.

to all local residents regardless of whether they attend games.[108] Benefits derived from professional sports teams and stadiums are similar to benefits received from a city zoo, public museum or public golf course.[109] A sports stadium's economic benefits include increased tourism, increased hotel occupancy, more jobs in the sports industry and other areas, increased charitable donations and overall increased consumption in the particular state or political subdivision.

Furthermore, states and political subdivisions along with the private sector have joined to oppose the anti-sports stadium contingent. Despite the increased burdens placed on states and political subdivisions, they understand the economic value of building sports stadiums using tax-exempt bonds as a primary method of financing.[110] For example, Maryland's Governor Paris Glendening commented on the move of the NFL's Cleveland Browns to Baltimore (the Baltimore Ravens) that, "the addition of the Baltimore NFL team and a sports stadium will bring excitement, enthusiasm, and team spirit back to Baltimore, but more importantly it will have a tremendous economic impact of approximately $132 million annually."[111] The Baltimore Ravens have become a football and economic powerhouse as Superbowl XXXV Champions on January 28, 2001. Moreover, the sports industry creates professional and basic jobs for people of varied economic and educational backgrounds. Sports team and stadium related jobs include sportscasters, producers, technical positions, private businesses catering to the sports industry, seasonal employees. Even the local residents, who park cars in their front yard for five dollars or more during home games, benefit from the stadiums.[112]

Additionally, sports stadiums have value beyond pure economic data. Many non-quantifiable factors support building professional sports stadiums. An example is the urban redevelopment that occurred when stadiums were built in depressed urban areas in Baltimore and Cleveland.[113] States and political subdivisions realize

108. *See* Green et al., *supra* note 101, at 5.

109. *See id.*

110. *See* Michael Stanton, *Growing Number of Critics Fail to Still Nation's Stadium-Building Mania*, THE BOND BUYER, Aug. 10, 1998, at 46.

111. Joseph Spiers, *Are Sports Teams Worth It?*, FORTUNE, Jan. 15, 1996, at 29.

112. *See, e.g.*, Mandy Rafool, *A Report By the National Conference of State Legislatures: "Fiscal Affairs: Playing the Stadium Game," in* UNDERSTANDING BUSINESS & LEGAL ASPECTS OF THE SPORTS INDUSTRY 1997, at 375, 382-84 (PLI Patents, Copyright, Trademarks, & Literary Prop. Course, Handbook Series No. 549, 1997).

113. *See id.* at 383 (noting that due to downtown locations, stadiums in Baltimore, Cleveland and Denver have aided urban redevelopment).

that there are non-quantifiable benefits to having sports teams. These factors range from increased community spirit, enhanced loyalty of local residents and a draw or reason for the public to come to a state or political subdivision and spend money during evening or non-business hours.[114] Non-quantifiable benefits cannot be represented by a specific dollar figure or economic statistic, but these benefits will accrue to a community over the course of a stadium's lifetime.

Critics contend that the quantifiable economic benefits and other non-quantifiable benefits provided by professional sports teams do not have a significant impact on a community because the dollars spent are dollars that people would spend anyway. Although critics may have a point with an arguable dollar figure impact, they fail to recognize that people may not spend entertainment dollars in the particular community that would otherwise receive these dollars by having a professional sports team and stadium. In fact, the entertainment/tourism dollars would be transferred to other communities that have sports entertainment. Communities without such entertainment opportunities would therefore lose the dollars or revenue from their community.

States and political subdivisions will continue to value the economic benefits of having sports stadiums that are home to their professional sports teams. The teams and stadiums provide states and political subdivisions with a major league status that other communities do not have. The price is right for states and political subdivisions that aggressively attract businesses and people to their communities, and therefore they should oppose the STADIA legislation.

B. Middle Ground Legislative Approach

First, the federal government's true agenda for enacting STADIA legislation must be established.[115] Congressional leaders are trying to eliminate the use of a federal subsidy for sports stadiums because the federal government dislikes competition between states and political subdivisions. Instead of eliminating an important financing tool for states and political subdivisions, an alternative middle ground approach should be adopted. This approach regulates and controls sports stadium financing and acknowledges the stadiums' necessity in American society.

114. *See* Green et al., *supra* note 101, at 5.

115. *See, e.g.*, Gasper, *supra* note 70.

The middle ground approach is to create section 141A of the Code to specify the requirements of qualified private activity bonds used to finance sports stadiums. This new Code section would provide a fresh start for tax-exempt bonds to finance sports stadiums by deleting all applicable Code references. Section 141A of the Code, would contain all provisions relating to tax-exempt bond financing for sports stadiums.

The new Code section would specifically allow sports stadium bonds to qualify for tax-exemption as an exempt facility and place a volume cap, similar to the Code section 146's volume cap, on sports stadium bonds up to $250 million with annual inflation adjustment. These actions would level the playing field from a federal perspective for wooing sports teams with extravagant stadium deals and also cap any loss of federal tax revenue. Then, based on their community's sentiments, states and political subdivisions could autonomously decide whether to sweeten their sports stadium deals. In contrast, the proposed STADIA legislation does not address the concerns raised from tax-exempt bond financing to build sports stadiums. The STADIA legislation limits competition and restricts state sovereignty by eliminating the economic autonomy of states and political subdivisions.

The bedrock of American society is the notion of free, open, competitive and efficient markets. The middle ground legislation is not anti-competitive and would not limit the ability of sports teams to relocate. States and political subdivisions would be free to negotiate stadium leases, contracts and options to keep a professional sports team from relocating.

Finally, the middle ground legislation would remove the ten percent requirement of the private payment/security test. The ten percent rule prohibits more than ten percent of the rents received from a sports stadium to fund the debt service on the tax-exempt bonds. This rule burdens states and political subdivisions. Section 141A of the Code would permit a minimum of a fifty percent payment/security test. This fifty percent test would add greater security to bondholders and decrease the financial burden on states and political subdivisions to provide additional funds to cover ninety percent of the debt service on tax-exempt bond for sports stadiums. The middle ground approach sensibly permits fifty percent of rent revenues on a sports stadium to cover debt service. Thus, the middle ground legislation meets the federal government's goals to reduce competition among states and political subdivisions for professional sports teams, and it limits losses of any tax revenues from the federal coffers. The proposed section 141A of the Code acknowledges that the private use/purpose of building sports stadiums is a qualified use and that it provides quantifiable and non-quantifiable economic benefits.

In fact, the proposed section permits the federal government to regulate better the issuance of tax-exempt bonds for sports stadiums and legitimizes an intended federal subsidy. Additionally, middle ground legislation relieves states and political subdivisions of the onerous task of raising funds through lottery proceeds, increased taxes or other sources to finance a sports stadium. Finally, if the price is right for their communities, the middle ground legislation reinforces autonomy of states and political subdivisions to value appropriately and make financing decisions.

V. CONCLUSION

The sports hungry public and our government officials must reach a middle ground to provide tax-exempt bond financing of sports stadiums and continue a much needed and used federal subsidy for states and political subdivisions. Elimination of the federal subsidy will not achieve the federal government's goal of decreasing inter-city competition; in fact the STADIA legislation's elimination of the subsidy would make the competition more intense and expensive. States and political subdivisions would be financially burdened by the federal mandate eliminating tax-exempt bonds and would use taxable bonds and other more expensive financing methods.

The better approach is to legitimize the tax-exempt bonds permitting sports stadium construction while regulating issuance of any tax-exempt bonds to finance the construction. The proposed middle-ground statutory framework curbs the federal government's urges to control constantly all levels of government and would allow states and political subdivisions to make necessary and appropriate local financing decisions. Many states and political subdivisions recognize the economic value of having a major league status over other communities. For these states and political subdivisions, the final economic answer is that the price is right for tax-exempt bonds to finance the building of sports stadiums.